

**COPY****AGREEMENT**

THIS AGREEMENT is made and effective as of the 27<sup>th</sup> day of July, 2004, by and between the Town of Caledonia (the "Town") and Wisconsin Energy Corporation, ("WEC"), on behalf of its subsidiaries, Wisconsin Electric Power Company ("Wisconsin Electric"), W.E. Power, LLC ("We Power"), WISPARK LLC ("WISPARK"), Elm Road Generating Station, LLC, and Wisconsin Gas Company ("Wisconsin Gas") (collectively referred to as the "Subsidiaries").

**WITNESSETH:**

WHEREAS, WEC or one of the Subsidiaries is the current owner and operator of coal-based electric generating facilities located in and adjacent to the Town.

WHEREAS, WEC desires, as a part of its "Power the Future" project for increasing electric generating facilities, to create two coal burning new electric generating facilities at the site of existing facilities in and adjacent to the Town.

WHEREAS, it is anticipated that the construction and operation of the new facilities will have certain effects on the Town, and the Public Service Commission has encouraged WEC to work with the Town to mitigate adverse effects of the project.

WHEREAS, in order to mitigate any such effects on the Town, WEC and the Town desire to enter into this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, WEC, for itself and the Subsidiaries, and the Town agree as follows:

I. AGREEMENT CONCERNING AIR QUALITY ISSUES.

- A. Purpose. The purpose of this paragraph 1 is to ensure that effective upon the date of this Agreement, the total actual annual air emissions from Elm Road Units 5-8 ("Existing Facilities") and Elm Road Units 1 and 2 ("New Facilities") will not result in a net increase of the total actual annual air emissions as compared with the baseline condition. The parties recognize that the air pollution requirements established and implemented by the Wisconsin Department of Natural Resources "DNR" are designed to protect public health and welfare and that this Agreement is in furtherance of and not in conflict with those State requirements.

- B. **Facilities Baseline Emission Level.** For the purpose of establishing that there will be no net increase in total actual annual air emissions, WEC has used calendar year 2000 as the baseline condition, and determined that the Baseline Emission Level from the facilities is 38,400 tons per year ("Baseline Emission Level"). The Baseline Emission Level includes the actual annual air emissions in calendar year 2000 of sulfur dioxide ("SO<sub>2</sub>"), nitrogen oxides ("NO<sub>x</sub>"), particulate matter ("PM"), mercury ("Hg"), volatile organic compounds ("VOC"), hydrochloric acid ("HCl"), hydrofluoric acid ("HF"), and sulfuric acid ("H<sub>2</sub>SO<sub>4</sub>").
- C. **Measure of Compliance.** WEC agrees that the total actual annual air emissions from the stacks of the Existing Facilities and New Facilities will not exceed the Baseline Emission Level, limits established under any consent decree, or emission limitations contained in air pollution control permits issued by the Wisconsin Department of Natural Resources (WDNR). Compliance with the Baseline Emission Level will be measured on a rolling 12-month basis so that in each 12-month period the emissions shall not exceed the Baseline Emission Level.
- D. **Implementation and Enforcement.**

1. The parties acknowledge that WEC has several air permits from WDNR for the New Facilities, and has pending before the federal court an emissions reduction plan for the Existing Facilities. If the limits resulting from these permits and this plan exceed the limits of paragraph C, the parties to this Agreement shall meet and agree to a local enforcement mechanism, the validity and enforceability of which WEC agrees not to contest, which requires WEC to meet the limits of paragraph C.
2. In furtherance of this Agreement, the Town will inform the federal court that it supports reducing emissions, including the reductions WEC contemplates achieving through the emissions reduction plan pending before the federal court.

**E. Air Monitoring.**

1. **Data Reporting.** The total suspended particulate (TSP) air quality and meteorological data from the monitoring site located on WEC property in Oak Creek as long as it is operated under this paragraph shall be reported to the Town after completion of QA/QC checks and shall be summarized in a quarterly report



submitted to the Town and DNR within forty-five (45) days after the end of the quarter. In addition to the Quarterly Report, the data shall also be available at the Caledonia Town Hall within thirty (30) days after completion of QA/QC checks. WEC will assist the Town's representative in estimating TSP air quality levels at locations in the Town based on monitoring data from the Oak Creek site and/or air quality modeling performed as part of the WDNR New Facilities' air permitting process

2. WEC may cease operation of any other monitoring in Town under any previous agreements. WEC shall make available up to \$15,000.00 to the Town to appraise the impacts of the facilities on the Town through modeling of those impacts by an independent engineer, and shall cooperate to provide data needed by that engineer.

## 2. DEVELOPMENT OF PROPERTY.

- A. WEC shall at its sole cost and expense: (a) complete a Market or Corridor Study; (b) complete an Environmental Site Conditions Analysis if the identified parcel or parcels from the Market or Corridor Study warrant

such analysis; and (c) develop a Land Use Plan for a certain parcel, or certain parcels, within the Town of Caledonia, which parcel(s) shall be selected by mutual Agreement of designated representatives of the Town of Caledonia and WEC. The Environmental Analysis, Market or Corridor Study and Land Use Plan shall be completed before January 1, 2006, and shared with the designated representative or representatives of the Town of Caledonia as soon as they are completed. This date may be extended at the request of the Town and by mutual agreement of the parties. In the event WEC does not proceed to develop, under paragraph 2B, the parcels studied, then thirty copies of the Environmental Analysis, Market or Corridor Study and Land Use Plan together with all supporting documents shall be provided to the Town of Caledonia. Notwithstanding anything to the contrary contained herein, WEC's obligations to provide the analysis, study, and plan under this paragraph 2A are contingent upon WEC obtaining all necessary consents and/or access from the owner(s) of the proposed property.

- B. For each of the first two New Facilities for which WEC received a CPCN from the PSC in Docket 05-CE-130 and all necessary final governmental permits and approvals, including those of the Town, if any, WEC shall invest or cause others to invest \$10,000,000 dollars, within ten years of the date of commencement of construction for each unit, to construct

improvements of a type WEC deems appropriate on mutually selected parcels within the Town of Caledonia. WEC shall use its best efforts to invest such funds in as expeditious a manner as is reasonably prudent.

Commencement of construction for Unit 1 shall be the start of excavation of the primary new unit site or the start of construction by WEC on the temporary bypass road for the Six Mile Road Project. Commencement of construction for Unit 2 shall be the beginning of foundation work for Unit Two. For purposes of this Agreement, improvements include the following:

1. Demolition of existing structures.
2. Environmental remediation, if necessary, to the level necessary to construct and occupy the planned building(s), facility(s) and/or uses, in accordance with Wisconsin environmental statutes and Wisconsin Administrative Code Chapters NR 700 -NR 754 requirements and any federal environmental laws, regulations and guidance.
3. Construction of improvements, including buildings and structures.

4. Installation of public improvements, including, but not limited to sanitary sewer, water main, storm water facilities, streets, including curb and gutter, street lights, landscaping and other amenities all of which shall be as required under the Code of Ordinances, Town of Caledonia Wisconsin.
5. Marketing of properties until initial occupancy.
6. Other improvements proposed by WEC and agreeable to the Town.
7. Acquiring all parcels necessary to undertake the aforementioned improvements.

3. **HEALTH AND SAFETY IMPACT RECOVERY.**

A. Beginning with Commencement of Construction and during the term (including any applicable extensions) of that certain Facility Lease (the "Facility Lease") between Elm Road Generating Station LLC and Wisconsin Electric for each unit of the New Facility (the "Lease Term"), WEC shall support, and shall use its best efforts to have approved, payments and funding to address the specific health and safety issues associated with New Facility construction and operation (a "Health and Safety Impact Recovery") as set forth in paragraphs B and C below. The parties have identified in Attachment A the specific health and safety



measures to which these payments are restricted. The Town shall provide justification and information as needed by the PSCW to evaluate the health and safety impact recovery, including, where applicable, the existence of similar impacts and similar mitigation programs in other communities. The Town shall indemnify WEC for any Health and Safety Impact Recovery Payments which the PSCW determines were not restricted to the specific purpose of the payment, as approved by the PSCW.

The Health and Safety Impact Recovery Payment must first be approved by the PSCW. Notwithstanding anything to the contrary contained herein, in no event will WEC or any of the Subsidiaries have any obligation under this Section 3 if the PSCW determines that the payment described in this Section 3 may not be recovered from customers through a regulatory mechanism.

In the event that one of the New Facilities permanently ceases operation after start-up and is decommissioned, the payments under paragraph B shall be reduced by the amount approved by the PSCW for the second unit. In the event that both of the New Facilities permanently cease operation after startup and are decommissioned, the payments under paragraphs B and C, below, shall cease.

#### **B. HEALTH AND SAFETY IMPACTS ON TOWN OPERATIONS.**



1. An annual payment shall be made to the Town in the amount of \$1,128,602 for the first unit (Elm Road Unit 1) and \$526,843 for the second unit (Elm Road Unit 2), in accordance with Paragraph A above.

1st Payment  
Due

As and to the extent approved by the PSCW, in accordance with paragraph A above, the payments will be made on a calendar year basis. The first Payment for the first unit shall be made within thirty (30) days after the later of 1). the granting of all permits by the Town necessary for construction and operation of the New Facility, if any, and for any associated improvements contained in this Agreement, excluding the Four Mile Road Project, and 2). commencement of construction (commencement of construction shall mean the start of excavation of the primary new unit site or the start of construction by WEC on the temporary bypass road for the Six Mile Road Project which ever occurs first). The first Payment for the second unit shall be made within thirty (30) days after the later of 1). the granting of all permits to WEC by the Town necessary for construction and operation of the second unit, if any, and for any associated improvements contained in this Agreement, excluding the Four Mile Road Project, and 2). beginning of the foundation work for the second unit. Thereafter, the Payments shall be paid in one annual payment on June 30th each year prior to and during the Lease Term. Health and Safety Impact Recovery Payments for partial calendar

years during the Lease Term (including the year of the first Health and Safety Impact Recovery Payment) shall be prorated on a per-diem basis.

2. These funds will only be used for the following purposes, as shown on Attachment A: Grade separation at Four Mile Road railroad crossing; increased costs of fire protection; increased costs of police protection; increased costs of highway snow plowing, road maintenance, and street lighting.

Funds  
used  
for:

#### C. HEALTH AND SAFETY IMPACTS ON NEIGHBORING PARCELS.

1. In addition to the annual payment for Health and Safety Impacts on Town Operations, identified in paragraph B above, and as and to the extent approved by the PSCW, in accordance with paragraph A above, an annual payment shall be made to the Town in the amount of \$400,000 per year for each year through the tenth year following Commencement of Operations at the second unit (Elm Road Unit 2). In the initial year the amount shall be \$200,000 which shall be made at the time of the first payment due under paragraph B above.

2. These funds will only be used for the following purposes, as shown on Attachment A: Noise and diesel fume mitigation programs.

Funds  
used  
for:

3. Due to the anticipated variability of these expenditures in each year, WEC and the Town will propose methods for carrying over funds from year to year and for returning unused funds, if appropriate, to match actual demand for these programs.

4. NO THIRD PARTY BENEFICIARIES. None of the provisions of this Agreement is intended for the benefit of any person except the parties hereto and their respective successors and permitted assigns. No interest on behalf of any third-party beneficiary is created by this Agreement. This Agreement obligates neither party to protect, defend, indemnify or otherwise act to help preserve against legal actions by third parties; provided further that neither party will assist or support, through Executive, Board or Corporate action, any legal action taken by third parties against the other party. Nothing in this paragraph relieves any party of its obligation to, or deprives any party of its right to, comply with ordinary legal obligations such as, but not limited to, those established in Chapter 19 of the Wisconsin Statutes.

5. REIMBURSEMENT OF TOWN EXPENSES. WEC agrees to reimburse the Town for its reasonable out-of-pocket expenses incurred by the Town in participating in all matters relating to or arising from the Town's advocacy activities related to the facilities, including, but not limited to, development of, and advocacy for, this Agreement before the PSCW and the Railroad Commission. The expenses to be reimbursed include the Town's out-of-pocket expenses for attorneys and technical consultants. Additionally, WEC agrees to reimburse the Town for out-of-pocket and staff costs associated with any conditional use review/approval, Town permit review/approval, or County permit

*Reimbursement*

review/approval in which Town staff participate, according to the terms of the respective Development Agreements executed by the parties.

6. TOWN APPROVALS. WEC, through the Subsidiaries, and the Town agree to cooperate in good faith on all matters involving review and approval of the New Facilities by the Town and any agencies or instrumentalities thereof. WEC's Subsidiaries will continue to work through the Town's planning and conditional use permit processes to resolve issues raised by the Town pertaining to the New Facility, and will enter into the Town's standard pre-development agreement and development agreement as they may be reasonably modified to address the circumstances of this project.

Subject to the requirements of this paragraph 6, nothing in this Agreement shall be construed as an agreement by the Town to grant Town approvals, or as an agreement to limit the Town's authority to establish reasonable limitations within conditional use permits, which shall remain subject to the planning and conditional use permit processes noted above.

7. TOWN SUPPORT. The Town agrees to discontinue efforts to oppose construction of the New Facilities before any applicable regulatory or governmental bodies including courts, and the Town will voluntarily dismiss with prejudice its appeal of the PSCW decision authorizing the units.



8. OPERATION OF RAILYARD FACILITIES. To address potential emissions and noise issues associated with diesel engines bringing coal to the facilities, WEC agrees to design and manage the railyard serving the Oak Creek Power Plant property that is under its control such that operations by WEC personnel will occur north of Six Mile Road.

9. UNION PACIFIC RAILROAD CROSSINGS.

- A. Parties agree to resolve issues concerning Rail Crossings as follows. Following construction of the improvements listed in this section, the Town will be responsible for maintenance and operation of the roadway, road right-of-way, and drainage improvements, including any equipment and facilities necessary for their safe operation, but the Town will not be responsible for any rail facilities, including the bridges and support structure of the bridges.
- B. Seven Mile Road Project. The Town will withdraw its opposition to efforts to increase the number of rail lines transecting the Town, including the construction of additional rail lines and participate as reasonably required in the closure of Seven Mile Road. A cul-de-sac in accordance with Town standards shall be constructed on Town right of way and We Energies property (if required) at both termini of Seven Mile Road at the

*All Bridges/Underpasses  
Maintenance  
+ Responsibility*



rail line. WEC shall work with the Town to create alternative emergency access to compensate for single access created by the closure of the Seven Mile Road crossing and shall facilitate any grants of rights of access with the WEC entity that owns the property. The alternative emergency access shall be, at a minimum, a gravel road built to town standards sufficient to support a fire truck. Only official Town of Caledonia emergency vehicles and emergency vehicles of an assisting municipality shall be allowed access. For safety purposes, the Town shall notify the Oak Creek Power Plant when access is imminent.

- C. **Six Mile Road Project.** The Town will support the construction of a grade separation at the Six Mile Road rail crossing along the current alignment. The Town agrees to work in good faith with WEC to obtain all Town permits and approvals and to acquire any property required for this grade separation in a timely manner to allow for construction to begin by March 1, 2005. The Six Mile Road Project shall be completed before operation of the first unit commences.
- D. **Further Agreement Concerning Six Mile Road and Seven Mile Road Projects.** WEC shall enter into agreements with the Town regarding the design and construction, and all costs therefor, of a grade separation structure, highway approach, and work incidental or appurtenant thereto,

*Reimbursement  
of costs.*

at the intersection of the Union Pacific Railroad (the "Railroad") crossing on Six Mile Road in the Town of Caledonia, Racine County, Wisconsin ("Six Mile Project") and the design and construction, and all costs therefor, of the closure of the intersection of the Railroad crossing on Seven Mile Road ("Seven Mile Project") (collectively known as the "Projects") pursuant to Title 14, Chapter 2 of the Town's Code of Ordinances. WEC agrees to pay to and/or reimburse the Town all costs as provided in Title 14, Chapter 2, of the Code of Ordinances and any other costs incurred by the Town related to the Projects.

E. Four Mile Road Project.

1. Pending approval by the PSCW of payment of health and safety costs for the Four Mile Road Project, the Town shall arrange for a complete feasibility study for the design and construction of a grade separation structure, highway approach, and work incidental or appurtenant thereto, at the intersection of the Railroad crossing on Four Mile Road in the Town of Caledonia, Racine County, Wisconsin ("Four Mile Project"). The Town will contract for the design and construction of the Four Mile Project.
2. WEC will support the inclusion of a grade separation at Four Mile Road as a project to address a public health and safety impact, which includes the full cost of the project, including but not limited

to all staff, legal, engineering, construction and acquisition, health and safety expenditures, pending PSCW approval of such. The Town shall be responsible, excluding costs, for the tasks of general project management. Post construction obligations shall be as stated in paragraph 9.A above.

- RR Comm  
+ UP
- F. Three Mile Road. The Town will discontinue requiring that a grade separation be built at Three Mile Road.
- G. Parties shall cooperate with each other and work with the Union Pacific Railroad and the Railroad Commission to accomplish the grade separation projects identified in Section 9.C and 9.D and 9.E above.
- H. The Town shall notify any inquiring interested party, or any party reasonably identified by WEC as needing such notification, that it has withdrawn its opposition to closing Seven Mile Road and discontinued requiring that a grade separation be built at Three Mile Road.
- I. Indemnification/Hold Harmless Agreement. WEC hereby expressly agrees to indemnify and hold the Town and its agents harmless from and against all claims, costs, and liability of every kind and nature, for injury or damage received or sustained by any person or entity in connection with, or on account of, the performance of work by WEC or its contractors or

agents at or for any construction site pursuant to this Agreement. WEC further agrees to aid and defend the Town or its agents (at no cost to the Town or its agents) in the event they are named as a defendant in an action concerning the performance of work by WEC or its contractors or agents pursuant to this Agreement, except where such suit is brought by WEC or its subsidiaries. WEC is not an agent or employee of the Town.

- J. Eminent Domain. The Town shall institute eminent domain proceedings, as it deems necessary, pursuant to Wis. Stats. § 32.05 upon the Town's review of the preliminary plans and specifications for the construction of the Six Mile Project, Seven Mile Project, and/or Four Mile Project. These proceedings will be to acquire properties, or other real property interests, that are necessary for the completion of the projects. The final number of parcels or interests to be acquired will be determined after review by the Town of the plans and specifications. With regard to the Six Mile Project and the Seven Mile Project, WEC shall pay all costs incurred by the Town related to the eminent domain proceedings, including, but not limited to, legal services, engineering services, relocation services, appraisal costs, relocation benefits, acquisition costs, demolition costs, and cost of related litigation and purchasing the parcels. With regard to the Four Mile Project, such costs will be considered under payment of Health and Safety Costs, paragraph 3 of this Agreement.

#### 10. ROADS.



- A. **County Line Road Realignment.** Town agrees to support the proposed realignment of the eastern most portion of County Line Road at the intersection of Highway 32 and will work in good faith with WEC to obtain all Town permits and approvals in a timely manner to allow for construction to begin by March 1, 2005.
- B. **Main Plant Entrance.** Town agrees to support the proposed main plant entrance which is planned to be located at the intersection of Highway 32 and the realigned County Line Road. The Town agrees to work in good faith with WEC to obtain all Town permits and approvals in a timely manner to allow for construction to begin by March 1, 2005.
- C. **Secondary Plant Entrance.** Town agrees to support the proposed secondary plant entrance which is planned to be located off of Highway 32 between Botting Road and Seven Mile Road. The Town agrees to work in good faith with WEC to obtain all Town permits and approvals in a timely manner to allow for construction to begin by March 1, 2005.

- II. **COMPROMISE OF TOWN CLAIMS.** WEC and the Town acknowledge and agree that the construction and operation of the New Facility, and other activities related thereto as described in the applications before the PSCW for CPCN approval, are anticipated to have substantial direct health and safety impacts on



the Town (the "Impacts"). Without limitation, the Impacts might include traffic safety concerns, noise, diesel emissions, activity levels that induce the need for additional fire, police, highway, and emergency medical service, and impacts on the ability of the Town to deliver emergency services. WEC and the Town agree that the obligations undertaken by WEC in this Agreement are designed to directly address the Impacts, and the Town agrees not to sue WEC nor any of its Subsidiaries for the Impacts except as set forth herein. Nothing in this Agreement shall be construed to preclude the Town from taking any action, including the filing of legal actions, to enforce provisions of its ordinances, permits or approvals, or the provisions of this Agreement related to the New Facility; provided, however, that such actions shall not prevent the continued use or operation of the New Facility and all other state permits. Under this agreement, the Town and, if the Town is succeeded by a successor municipality, that successor municipality, has authority to enforce Conditional Use Permits applicable to WEC; provided that the Town shall not enforce Conditional Use Permits in a manner inconsistent with enforcement, or which adds to the cost of complying with enforcement, by any other jurisdiction with legal authority to enforce the same provisions, unless said jurisdiction delegates to the Town or otherwise authorizes or permits the Town to pursue enforcement in lieu of and not in addition to the jurisdiction's own enforcement.

12. **DEFAULT PROVISIONS.** A party shall be in default under this Agreement if it fails to perform any of its obligations as set forth herein, and such failure continues for a period of sixty (60) days after the defaulting party's receipt of written notice of such failure from the non-defaulting party. This time will be extended for a reasonable period if the defaulting party is diligently pursuing a cure to the default. Thereafter, the non-defaulting party may pursue the dispute resolution procedures in paragraph 21.
13. **ASSIGNMENT.** Neither party may assign its interest under this Agreement without the prior written consent of the other party hereto, which consent will not be unreasonably withheld or delayed. Notwithstanding the foregoing, the Town may assign its interest in this Agreement to any successor entity or entities, including any municipality or municipalities established under Wisconsin law with jurisdiction over part or all of the area now occupied by the Town.
14. **NOTICES.** All notices permitted or required by this Agreement shall be given in writing and shall be considered given upon receipt if hand delivered to the party or person intended or a successor designated by a party to this Agreement, or upon facsimile transmission to the fax numbers set forth herein or a successor number or numbers designated by the party, or one business day after deposit with a nationally recognized overnight commercial courier service, air bill prepaid, or forty-eight (48) hours after deposit in the United States mail, postage prepaid, by

certified mail, return receipt requested, addressed by name and address to the party or person intended as follows, or a successor party or address, or both:

To WEC: Wisconsin Energy Corporation  
231 West Michigan Street  
Milwaukee, WI 53203  
Attn: Catherine Phillips  
Fax No.: (414) 221- 2139

To the Town: Town of Caledonia  
6922 Nicholson Rd.  
Caledonia, WI 53108  
Attn: Town Administrator  
Fax: (262) 835-1799

15. **GOVERNING LAW.** This Agreement concerns real property located in the State of Wisconsin, and shall be interpreted and construed according to the laws of the State of Wisconsin.
16. **SEVERABILITY OF PROVISIONS.** If any of the terms or conditions contained herein shall be modified or declared to be invalid or unenforceable by the PSC or any court, and the invalidating or modifying decision is either not appealed or is

appealed but sustained by a court of competent jurisdiction, then the remaining provisions and conditions of this Agreement and the provisions modified or the application of such to persons or circumstances other than those to which it is declared invalid or unenforceable, shall not be affected thereby and shall remain in full force and effect and shall be valid and enforceable to the full extent permitted by law, except that as to any such provisions or conditions declared invalid or unenforceable, the parties agree to negotiate a comparable substitute provision.

17. **CAPTIONS.** The captions in this Agreement are inserted only as matters of convenience and for reference and in no way define or limit the scope or intent of the various provisions, terms or conditions hereof.
18. **BINDING EFFECT.** The terms and conditions of this Agreement shall be binding upon and benefit the parties hereto and their respective successors and assigns.
19. **ENTIRE AGREEMENT.** This Agreement may be modified, amended or terminated only by written instrument signed by persons duly authorized to execute modifications to this Agreement.
20. **COUNTERPARTS.** This Agreement may be executed in one or more counterparts, each of which will be deemed an original.



21. **RESOLUTION OF DISPUTES.** If a dispute arises out of or is related to this Agreement or the breach thereof, and if the dispute cannot be settled through negotiation, the parties agree to first attempt in good faith to settle the dispute by mediation under the CPR (Center for Public Resources) Institute for Dispute Resolution Mediation Procedure then currently in effect before resorting to arbitration. If the parties are unable to so resolve the matter within forty-five (45) days of commencement of mediation, then any remaining unresolved controversy or claim arising out of or relating to this Agreement or the breach thereof shall be settled by arbitration under the provisions of the Wisconsin Arbitration Act (Wis. Stat. ch. 788) and the procedures described below. The arbitration shall be conducted before a single neutral arbitrator appointed by the parties. If the parties fail to agree upon a single arbitrator within ten (10) days of the referral of the dispute to arbitration, parties shall each choose one arbitrator who shall sit on a three-member arbitration panel. The two arbitrators so chosen shall select a third arbitrator to chair the arbitration panel. If the two appointed members cannot agree on a third member within fifteen (15) days, either party may request that the appointment be made as provided in Wis. Stat. § 788.04(1) by a Circuit Court Judge in the County in which the dispute arose. The arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect, and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction.



22. **REPRESENTATIONS AS TO AUTHORITY.** Each party to this Agreement represents and warrants as follows:
- (a) It is duly organized, validly existing and in good standing under the laws of the state of its incorporation and has the power and authority to consummate the transactions contemplated by this Agreement.
  - (b) All proceedings necessary for it to consummate the transactions contemplated by this Agreement have been duly taken in accordance with law.
  - (c) The persons executing this Agreement on behalf of it have been duly authorized to execute this Agreement.
23. **FAX SIGNATURES.** The parties agree that fax signatures shall be binding on the parties hereto.
24. **EFFECTIVENESS OF PROVISIONS.** Subject to the different effective dates, contingencies, and conditions in individual paragraphs, the terms of this Agreement are effective upon approval by WEC and the Town.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first  
above written.

**WISCONSIN ENERGY CORPORATION**

By: [Signature]  
Print Name: LARRY SELUSTAO  
Title: General Counsel

**TOWN OF CALEDONIA**

By: [Signature]  
Print Name: Steven Greenfield  
Title: Town Board Chair

Attest: [Signature]  
Print Name: Wendy M. Christensen  
Title: Town Clerk

## **Attachment A**

### **HEALTH AND SAFETY IMPACTS**

A. The parties have identified the following specific health and safety issues and impacts associated with New Facility construction and operation measures. Payments under Section 3 of the Agreement are restricted to the following purposes.

B. Health and Safety Impacts on Town Operations. Each of these health and safety impacts on the Town or its residents, and/or Town costs or operations, addresses impacts that have been identified as health and safety impacts of concern on the record of Public Service Commission of Wisconsin in the agency's consideration of WEC's Power The Future proposal. The Town shall provide further justification or information as needed by the PSCW to evaluate the health and safety impact recovery. The following health and safety impacts are included:

1. Grade Separation Structure at the Four Mile Road railroad crossing, including but not limited to all staff, legal, engineering, construction and acquisition activities and work incidental or appurtenant thereto.
2. Fire Department Personnel, related equipment, capital, and operating costs.
3. Police Department Personnel, related equipment, capital, and operating costs.
4. Highway Department Personnel related to additional third-shift snow plowing requirements.
5. Limited Highway safety impacts related to road maintenance and street lighting.

C. Health and Safety Impacts on Neighboring Parcels.

1. Noise Mitigation Program
2. Diesel Fume Mitigation Program